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8

9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,	)	Case No. 07cv2100-DMS(AJB)
	)	
12 Plaintiff,	)	
	)	PLAINTIFF'S RESPONSE AND
13 v.	)	OPPOSITION TO CRAIG LAKE'S
	)	MOTION TO SET ASIDE COURT'S
14 ONE 2006 BENTLEY FLYING SPUR	)	ORDER GRANTING PLAINTIFF'S
SEDAN, CALIFORNIA LICENSE	)	MOTION FOR JUDGMENT BY
15 NO. 5GAG721	)	DEFAULT
VIN: SCBBR53WX6036543,	)	
16 ITS TOOLS AND APPURTENANCES,	)	DATE: May 16, 2008
	)	TIME: 1:30 P.M.
17 Defendant.	)	CTRM: 10
_____	)	

18  
19 TO: CRAIG O. LAKE

20 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through  
21 its counsel, Karen P. Hewitt, United States Attorney, and Bruce C.  
22 Smith, Assistant United States Attorney, and hereby files its response  
23 and opposition to Craig Lake's motion to set aside the Court's order  
24 granting plaintiff's motion for judgment by default. Said response  
25 is based upon the files and records of this case, together with the  
26 attached statement of facts, statement of facts, and memorandum of  
27 points and authorities.

28 //

I

STATEMENT OF CASE

On May 25, 2007, the Honorable Anthony J. Battaglia, U.S. Magistrate Judge of this Court, issued a seizure warrant for the above-referenced defendant 2006 Bentley Flying Spur sedan, vehicle identification number ("VIN") SCBBR53WX6C036543, and bearing California license number 5GAG721 (hereinafter referred to as "2006 Bentley Flying Spur sedan" or "defendant vehicle"). The registered owner of the vehicle was and remains Jeremy Cao of Rancho Santa Margarita, California. The seizure warrant was issued on grounds the defendant 2006 Bentley Flying Spur sedan constituted, was derived from, or represented proceeds traceable to violations of Title 18, United States Code, Section 1343 - wire fraud, and Title 18, United States Code, Section 1957 - money laundering.

On June 1, 2007, agents of the United States Secret Service (hereinafter referred to as "USSS") seized the defendant 2006 Bentley Flying Spur sedan at a location in this district. At the moment of the seizure, the defendant vehicle was in the possession of Trevor Lake and Craig Lake.

On July 12, 2007, the seizing authority sent written notices re: seizure of property to Jeremy Cao, Trevor Lake, and Craig Lake. On or about August 16, 2007, Craig Lake sent a document entitled "Seized Asset Claim Form" to the USSS, claiming an interest in the 2006 Bentley Flying Spur sedan.

On November 2, 2007, the government filed its verified complaint for forfeiture in the instant case. On November 5, 2007, the government sent a copy of the verified complaint for forfeiture and a written notice of judicial forfeiture proceedings to Jeremy Cao and

1 Craig Lake. The notice instructed the recipients to file with this  
2 Court their verified claim within 35 days, and to file their answer  
3 to the complaint within 20 days of the filing of their verified claim.  
4 Craig Lake received his copy of the verified complaint for forfeiture  
5 and notice of judicial forfeiture proceedings on November 7, 2007.  
6 Jeremy Cao received his materials on November 16, 2007. The  
7 government received no response from either potential claimant.

8 On January 30, 2008, the government filed with this Court its  
9 declaration of and request for clerk's entry of default as to the  
10 interest of Jeremy Cao and Craig Lake.

11 On February 5, 2008, the government filed with this Court its  
12 notice of motion and motion for judgment by default as to the interest  
13 of Jeremy Cao, Craig Lake, and all potential claimants. On the cover  
14 page of its filing, the government noticed March 21, 2008 at 1:30  
15 p.m., in Courtroom 10 as the date, time and place for the hearing.  
16 That same day, copies of the government's filing were sent to Jeremy  
17 Cao at his Rancho Santa Margarita, California address, and to Craig  
18 Lake at his Lemon Grove, California address. The government received  
19 no response from either potential claimant.

20 On March 14, 2008, this Court issued its order granting  
21 plaintiff's motion for judgment by default against Jeremy Cao, Craig  
22 Lake, and all potential claimants. That same day, the clerk's default  
23 judgment in a civil case was entered.

24 On or about March 20, 2008, Craig Lake lodged with this Court  
25 documents entitled Notice of Motion and Motion to Set Aside Entry of  
26 Default, and Points and Authorities in Support of Application for  
27 Relief from Entry of Default. The documents did not comply with the  
28 requirements of the Local Rules, and were initially rejected by the

1 Clerk of the Court. On March 21, 2008, however, this Court issued its  
2 order directing the Clerk to file the documents *nunc pro tunc* to the  
3 date received.

4 On or about April 4, 2008, Craig Lake lodged with this Court a  
5 document entitled Declaration of Craig Orlando Lake and Seized Asset  
6 Claim in Support of Application for Relief from Default. The document  
7 did not comply with the requirements of the Local Rules, and was  
8 initially rejected by the Clerk of the Court. On April 8, 2008,  
9 however, this Court issued its order directing the Clerk to file the  
10 document *nunc pro tunc* to the date received.

11 On April 7, 2008, this Court issued its order setting a hearing  
12 date. The parties were directed to appear before this Court on  
13 May 16, 2008 at 1:30 p.m. for a motion hearing relative to Craig  
14 Lake's request of relief from entry of default.

15 II

16 STATEMENT OF FACTS

17 **Purchase of the defendant 2006 Bentley Flying Spur sedan.** Jeremy  
18 Cao (hereinafter referred to as "Cao") purchased the defendant  
19 2006 Bentley Flying Spur sedan as a new vehicle from Newport Auto  
20 Center, Newport Beach, California for approximately \$204,182.34.

21 On June 21, 2005, he initiated the purchase by making a \$5,000.00  
22 down payment using an American Express credit card.

23 On March 7, 2006, Cao paid an additional \$1,412.86, using another  
24 American Express credit card. On that same date, he presented the  
25 dealership with a Wells Fargo Bank cashier's check in the amount of  
26 \$197,769.48. Cao took delivery of the defendant 2006 Bentley sedan  
27 on or about that same day.

28 //

1 Based on an analysis of banking activity leading up to the  
2 March 7, 2006 purchase of the defendant 2006 Bentley Flying Spur  
3 sedan, Cao consolidated investor funds from multiple investment  
4 accounts into a single account. The investor funds were withdrawn by  
5 Cao from a host of investor accounts he maintained, and deposited into  
6 an Eastpoint Management (hereinafter referred to as "Eastpoint") Wells  
7 Fargo Bank account. The Eastpoint account in which Cao deposited the  
8 investor funds had an account number ending in 9819 (hereinafter  
9 referred to as "Eastpoint account #9819"). The signatory on Eastpoint  
10 account #9819 was Cao.

11 On or about March 7, 2006, Cao withdrew approximately \$197,769.48  
12 from the Eastpoint account #9819, and purchased the Wells Fargo Bank  
13 cashier's check. On or about that same date, Cao presented that  
14 cashier's check to Newport Auto Center in final  
15 payment for the defendant 2006 Bentley sedan.

16 On or about March 7, 2006, the auto dealership transferred  
17 \$1,279.00 to the California Department of Motor Vehicles (hereinafter  
18 referred to as "DMV") as the vehicle registration fees for the year.  
19 On or about March 1, 2007, Cao paid \$1,157.00 to the DMV for the next  
20 year's registration fees. Cao's most recent registration fee payment  
21 to the DMV for the defendant 2006 Bentley Flying Spur sedan was made  
22 on or about March 10, 2008, in the amount of \$1,036.00. As recently  
23 as March 25, 2008, the official records of the DMV reflected Jeremy  
24 Cao of Santa Margarita, California was the sole registered owner of  
25 the defendant 2006 Bentley Flying Spur sedan. No lienholder has ever  
26 been registered on title. Since the day the defendant vehicle was  
27 first sold and registered as a new car until today, Jeremy Cao of  
28 Santa Margarita, California has always been the sole registered owner.

1       **Government seizure of the defendant 2006 Bentley Flying Spur**  
2 **sedan.** On May 25, 2007, a Seizure Warrant was issued by the Honorable  
3 Anthony J. Battaglia, U.S. Magistrate Judge of this Court, ordering  
4 the seizure of the defendant 2006 Bentley Flying Spur sedan. On the  
5 same date, a tracking device warrant was also issued by a U.S.  
6 District Court Judge in this district, ordering the Lojack Corporation  
7 to furnish information, facilities, and technical assistance necessary  
8 to enable the investigating federal law enforcement agents to locate  
9 the defendant vehicle.

10       Meanwhile, Assistant U.S. Attorney John Owens attempted to  
11 negotiate the surrender of the 2006 Bentley Flying Spur sedan with  
12 Cao's criminal defense attorney. On or about May 31, 2007, it became  
13 apparent the option of a negotiated surrender of the defendant vehicle  
14 had a low probability of success.

15       On June 1, 2007, the investigating law enforcement agents caused  
16 the Lojack system aboard the defendant vehicle to be activated.  
17 Shortly after activation, a San Diego Police Department (hereinafter  
18 referred to as "SDPD") patrol helicopter detected the Lojack signal  
19 being emitted from the 2006 Bentley Flying Spur sedan. The crew  
20 aboard the SDPD helicopter observed the defendant vehicle in the  
21 parking lot of a La Jolla, California area apartment complex. The  
22 helicopter crew directed an SDPD patrol vehicle to the area.

23       As the SDPD helicopter hovered above the stationary defendant  
24 vehicle, the crew observed a younger man, later identified as Trevor  
25 Lake, standing next the to 2006 Bentley Flying Spur sedan, holding a  
26 cellular telephone to his ear. At one point, Trevor Lake gestured to  
27 the SDPD helicopter hovering above him. Moments later, an older man  
28 later identified as Craig Lake, entered the defendant vehicle, and

1 drove it inside a nearby covered parking structure. Within minutes,  
2 two SDPD patrol officers arrived on the scene. The officers obtained  
3 a set of keys for the defendant vehicle from Craig Lake.

4 **Craig Lake is interviewed when the defendant vehicle is seized.**

5 Shortly after the arrival of the SDPD patrol officers, USSS Agent  
6 McCaffree and SDPD Detective Morel came to the scene. While waiting  
7 for a tow truck, the agent and detective interviewed Craig Lake. Lake  
8 related the following: Craig Lake and Jeremy Cao, the registered owner  
9 of the 2006 Bentley Flying Spur sedan, and their mutual attorney  
10 discussed the possibility of a sale of the vehicle to Craig Lake.  
11 Lake proposed transferring his ownership of 80 acres of land in Utah  
12 to Cao in exchange for title to the defendant vehicle. Detective  
13 Morel asked Craig Lake whether he was aware that a seizure warrant had  
14 been issued for the 2006 Bentley Flying Spur sedan. Lake admitted he  
15 was aware of the seizure warrant. Craig Lake explained he thought  
16 that if he took possession of the defendant vehicle before the  
17 government seized it, the government would be unable to go forward  
18 with the seizure. Detective Morel asked Lake if he re-registered the  
19 2006 Bentley Flying Spur sedan with the DMV in his name. Lake advised  
20 that he had not done so.

21 Some time later, while still waiting for the tow truck to arrive,  
22 Craig Lake admitted to Detective Morel and USSS Agent McCaffree that  
23 his attorney was not present when he discussed buying the 2006 Bentley  
24 Flying Spur sedan with Cao. Lake also confirmed that while discussing  
25 the proposed sale of the defendant vehicle, Jeremy Cao told Lake that  
26 the government was looking for the defendant vehicle and planned to  
27 seize it.

28 //

1       **Craig Lake files his claim for the seized 2006 Bentley Flying**  
2 **Spur sedan.** On or about July 12, 2007, the USSS sent written notice  
3 to Craig Lake at 7951 Broadway, Lemon Grove, California (hereinafter  
4 referred to as "Lake's Lemon Grove address"), advising him that the  
5 defendant vehicle was seized, the legal basis for seizure, and the  
6 steps he would have to take to make a claim. Lake was given until  
7 August 16, 2007 as the deadline for filing his claim. On or about  
8 August 16, 2007, Craig Lake sent in his written claim to USSS via  
9 facsimile. In his claim, Lake stated under penalty of perjury, "Cao  
10 and I made the sale of the car to me in Feb - at the Fuddruckers in  
11 El Torro - 23621 El Torro - 92030 - He then went out of town and  
12 wanted to service the car - I had possession when seized." Craig Lake  
13 attached three documents to his claim: (1) a photocopy of the cover  
14 sheet of the seizure warrant for the 2006 Bentley Flying Spur sedan;  
15 (2) a photocopy of a single page pre-printed document bearing many  
16 handwritten amendments and purported signatures entitled, "Real Estate  
17 Purchase Contract and Receipt for Deposit;" and (3) a photocopy of  
18 what is purported to be the front and back of the single page State  
19 of California Certificate of Title for the 2006 Bentley Flying Spur  
20 sedan.

21       **Government counsel contacts Craig Lake and requests all documents**  
22 **in his possession supporting his claim.** On October 11, 2007,  
23 government counsel placed a call to Craig Lake's cellular telephone.  
24 When Lake answered, he explained he was at lunch. Government counsel  
25 asked that Lake send him all documents and things in his possession  
26 which support his claim of interest in the 2006 Bentley Flying Spur  
27 sedan. Lake said he would do so, and asked government counsel to  
28 again call his cellular telephone number and leave counsel's office



1 mailing address on Lake's voice mail. Government counsel did as  
2 requested. On October 29, 2007, government counsel received a cover  
3 letter and attached materials from Craig Lake.

4 **Craig Lake is served with the filed verified complaint for**  
5 **forfeiture, and the notice of judicial forfeiture.** On November 2,  
6 2007, the government filed its verified complaint for forfeiture in  
7 the instant case. On November 5, 2007, the government sent a copy of  
8 the verified complaint for forfeiture and a written notice of judicial  
9 forfeiture proceedings to Craig Lake at Lake's Lemon Grove address.  
10 The notice instructed Lake to file with this Court his verified claim  
11 within 35 days, and to file his answer to the complaint within 20 days  
12 of the filing of his verified claim. On November 7, 2007, Craig Lake  
13 received his copy of the verified complaint for forfeiture and notice  
14 of judicial forfeiture proceedings.

15 The government received no response from Craig Lake until he  
16 lodged his notice of motion and motion to set aside entry of default  
17 on March 20, 2008. Contrary to the representations made by Lake at  
18 page 2 of his April 8, 2008 filing, at no time after the filing of the  
19 verified complaint for forfeiture did Craig Lake communicate with  
20 government counsel via the telephone or in writing.

21 III

22 LEGAL ARGUMENT

23 **A. Entry of Default and Default Judgment Was**  
24 **Appropriate In This Case and There Is No**  
**Good Cause to Set Aside the Default Judgment**

25 Entry of Default and Default Judgment in this case is governed  
26 by Federal Rules of Civil Procedure, Rule 55 (a), (b), and (c) which  
27 provides in pertinent part:

28 //

1 (a) *ENTRY*. When a party against whom a judgment for  
2 affirmative relief is sought has failed to plead or  
3 otherwise defend as provided by these rules and that fact  
is made to appear by affidavit or otherwise, the clerk  
shall enter the party's default.

4 (b) *JUDGMENT*. Judgment by default may be entered as  
5 follows:

6 (1) *By the Clerk*. When the plaintiff's claim against  
7 a defendant is for a sum certain or for a sum which  
8 can by computation be made certain, the clerk upon  
9 request of the plaintiff and upon affidavit of the  
amount due shall enter judgment for that amount and  
costs against the defendant, if the defendant has been  
defaulted for failure to appear and is not an infant  
or incompetent person.

10 (2) *By the Court*. In all other cases the party  
11 entitled to a judgment by default shall apply to the  
court therefor;

12 . . .

13 (c) *Setting Aside Default*. For good cause shown the  
14 court may set aside an entry of default and, if a judgment  
by default has been entered, may likewise set it aside in  
accordance with Rule 60(b).

15 1. **All Requirements For Entry of Default and Default**  
16 **Judgment by the Clerk of the Court Were Met.**

17 Here the government complied with the requirements for Entry of  
18 Default and Default Judgment by the Clerk of the Court. The verified  
19 complaint for forfeiture filed by the government in the instant case  
20 clearly describes the asset to be forfeited, and the legal basis upon  
21 which the asset can be forfeited. Most importantly, the government  
22 clearly alleges in great detail the facts supporting its forfeiture  
23 action.

24 On November 2, 2007, the government filed its verified complaint  
25 for forfeiture in the instant case. On November 5, 2007, the  
26 government sent a copy of the verified complaint for forfeiture and  
27 a written notice of judicial forfeiture proceedings to Craig Lake at  
28 Lake's Lemon Grove address. The notice instructed Lake to file with

1 this Court his verified claim within 35 days, and to file his answer  
2 to the complaint within 20 days of the filing of his verified claim.  
3 On November 7, 2007, Craig Lake received his copy of the verified  
4 complaint for forfeiture and notice of judicial forfeiture  
5 proceedings.

6 The government received no response or reply from Craig Lake.  
7 Specifically, he failed to file his verified claim; nor did he file  
8 an answer. On January 30, 2008, the government filed its Declaration  
9 of and Request for Clerk's Entry of Default as to the Interest of  
10 Jeremy Cao, Craig Lake, and all other Potential Claimants.

11 On January 30, 2008, the Clerk of the Court granted entry of  
12 default and default judgment. The clerk's default was later withdrawn  
13 and set aside by this Court, and the plaintiff was ordered to pursue  
14 a default judgment from the Court.

15 On February 5, 2008, the government filed its Notice of Motion  
16 and Motion for Judgment by Default as to the Interest of Jeremy Cao,  
17 Craig Lake, and All Potential Claimants. The hearing date indicated  
18 on the cover of the government's filing was March 21, 2008, at 1:30  
19 p.m. before this Court. Copies of the government's filing were mailed  
20 to Jeremy Cao at his Rancho Santa Margarita, California address, and  
21 to Craig Lake at his Lemon Grove, California address.

22 As of March 14, 2008, no parties had responded to the  
23 government's motion for default judgment, and on that date this Court  
24 filed its Order Granting Motion for Judgment by Default Against Jeremy  
25 Cao, Craig Lake, and All Potential Claimants.

26 On March 21, 2008, Craig Lake lodged his Notice of Motion and  
27 Motion to Set Aside Entry of Default. The documents did not comply  
28 with the requirements of the Local Rules, and were initially rejected

1 by the Clerk of the Court. On March 21, 2008, however, this Court  
2 issued its order directing the Clerk to file the documents *nunc pro*  
3 *tunc* to the date received.

4 On April 4, Craig Lake lodged with this Court a document entitled  
5 Declaration of Craig Orlando Lake and Seized Asset Claim in Support  
6 of Application for Relief from Default. The document did not comply  
7 with the requirements of the Local Rules, and was initially rejected  
8 by the Clerk of the Court. On April 8, 2008, however, this Court  
9 issued its order directing the Clerk to file the document *nunc pro*  
10 *tunc* to the date received.

11 **2. Craig Lake Has Not Shown that Good Cause**  
12 **Exists to Set Aside the Default Judgment.**

13 On April 7, 2008, this Court issued its order setting a hearing  
14 date. The parties were directed to appear before this Court on  
15 May 16, 2008 at 1:30 p.m. for a motion hearing relative to Craig  
16 Lake's request of relief from entry of default judgment. A trial  
17 court has the discretion to set aside its entry of default for "good  
18 cause," and the default judgment for various reasons, including  
19 "mistake, inadvertence, or excusable neglect," Federal Rules of Civil  
20 Procedure, Rule 60(b)(1). The Ninth Circuit tends to treat these  
21 grounds the same: "A showing of lack of culpability sufficient to meet  
22 the Rule 55(c) 'good cause' standard is ordinarily sufficient to  
23 demonstrate as well the 'excusable neglect' or 'mistake' criteria  
24 under Rule 60(b)(1)." TCI Group Life Ins. Plan v. Knoebber, 244 F.3d  
25 691, 696, (9th Cir. 2001).

26 Craig Lake has not affirmatively met any of the particular  
27 grounds for relief described in Federal Rules of Civil Procedure,  
28 Rule 60(b). For example, relief may be granted on the showing of

1 mistake by the responding party. The mistake can be one of fact or  
2 law, but in either case it must relate to the responding party's duty  
3 to respond the to complaint, rather than to the merits of plaintiff's  
4 claim. See Kingvision Pay-Per-View Ltd. v. Lake Alice Bar, 168 F.3d  
5 347, 350 (9th Cir. 1999).

6 Thus, relief may be granted where a party who has been served  
7 with process is *reasonably* mistaken as to his or her duty to respond  
8 to the complaint. See Brien v. Pullman Industries, Inc. 71 F.3d  
9 1073,1078 (2nd Cir. 1995); Newhouse v. Probert, 608 F. Supp. 978, 985  
10 (W.D. Mi. 1985).

11 Here, the instructions on the Notice of Judicial Forfeiture  
12 Proceedings served on Craig Lake were clear as to what needed to be  
13 done. Lake was advised that a Complaint for Forfeiture of the  
14 defendant 2006 Bentley Flying Spur sedan was filed with this Court.  
15 A copy of the complaint was enclosed with the notice. Moreover, Lake  
16 was advised that to contest the forfeiture, he **must** file a Verified  
17 Claim with the Clerk of this Court at the stated mailing address  
18 within **thirty-five(35) days** of November 5, 2007. Lake was further  
19 instructed to serve a copy of his Verified Claim upon government  
20 counsel at the stated mailing address. Lake was also advised that he  
21 **must** file and serve on government counsel an Answer to the Complaint  
22 within **twenty (20) days** of the date of the filing of his Verified  
23 Claim. Again, Lake was provided with the mailing addresses for both  
24 the Clerk of this Court and government counsel. In addition to the  
25 mandatory filing schedule, Lake was advised of what information his  
26 Verified Claim must contain. Finally, Lake was solemnly warned that  
27 his "failure to follow the requirements set forth (in the government's  
28 notice) may result in judgment by default taken against you for the

1 relief demanded in the complaint." The government's notice closed  
2 with the admonition to Lake that he seek legal counsel to advise Lake  
3 and protect his rights.

4 Despite these instructions and warnings, Craig Lake did nothing  
5 to comply with the legal requirements for a response to a verified  
6 complaint for forfeiture. He simply ignored the notice.

7 Relief from default may also be granted upon a showing of  
8 "surprise, inadvertence, or excusable neglect." Federal Rules of Civil  
9 Procedure, Rule 60(b). These terms all seem to require that the party  
10 moving for default show a reasonable excuse for the default. See  
11 Meadows v. Dominican Republic, 817 F.2d 517, 520 ( 9th Cir. 1987).  
12 The term excusable neglect is not defined in the rules and its meaning  
13 must be determined from the case law. The term "neglect" implies  
14 carelessness or simple negligence. It need not be shown that the  
15 default was due to matters beyond the defendant's control. "At least  
16 for the purposes of Rule 60(b) 'excusable neglect' is understood to  
17 encompass situations in which the failure to comply with a filing  
18 deadline is attributable to negligence." Pioneer Investment Services  
19 Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380, 394  
20 (1993).

21 What constitutes "excusable" neglect requires an examination of  
22 the equities:

23 . . . [T]he determination is at bottom an equitable one,  
24 taking account of all relevant circumstances surrounding  
25 the omission. These include ... the danger of prejudice to  
26 the debtor, the length of the delay and its potential  
impact on judicial proceedings, the reason for the delay,  
including whether it was within the reasonable control of  
the movant, and whether the movant acted in good faith.

27 Pioneer Investment Services Co. v. Brunswick Associates Lit.  
28 Partnership, 507 U.S. at 395.

1 Particular matters which may result in denial of relief include:  
2 (1) prejudice to the non-defaulting party if relief is granted; (2)  
3 lack of a meritorious defense by the defaulting party; and (3)  
4 culpable conduct by the defaulting party causing the default. TCI  
5 Group Life Insurance Plan v. Knoebber, 244 F.3d 691, 696 (9th Cir.  
6 2001); Gucci America, Inc. v. Gold Center Jewelry, 158 F.3d 631, 634  
7 (2nd Cir. 1998). This tripartite test is "disjunctive," meaning that  
8 the district court is free to deny the motion if any of these three  
9 factors is shown to exist. American Association of Naturopathic  
10 Physicians v. Hayhurst, 227 F.3d 1104, 1108-09 (9th Cir. 2000).

11 When evaluating the three factors, this Court should use a  
12 balancing approach. The Supreme Court has stated that "all relevant  
13 circumstances" must be taken into consideration in determining whether  
14 an omission is "excusable." Pioneer Investment Services Co. v.  
15 Brunswick Associates Lit. Partnership, 507 U.S. at 395. Therefore,  
16 no single factor should be conclusive in determining whether relief  
17 from default should be granted. Rather, all relevant factors should  
18 be balanced in determining whether a party is deserving of the  
19 sanction of a default judgment. Information Systems & Network  
20 Corporation v. United States, 994 F.2d 792, 796 (D.C. Cir. 1993).

21 In his April 8, 2008 filing, at page 2 of his Declaration of  
22 Craig Orland Lake, in paragraph number 8, Craig Lake asserts the basis  
23 for his failure to timely file his claim and answer. Lake states,  
24 "Between July 13, 2007 and February 5, 2008, I have also had verbal  
25 communications with BRUCE CAMPBELL SMITH, requesting additional time  
26 for response to the complaint due to ill health." Lake's  
27 representations are absolutely false. The instant matter was not  
28 assigned to Assistant U.S. Attorney Bruce Smith until October 9, 2007.

1 Moreover, government counsel and Craig Lake have had only one  
2 telephone conversation. On October 11, 2007, government counsel  
3 reached Craig Lake on his cellular telephone, and requested that Lake  
4 submit all documents and materials in support of his claim. Lake made  
5 no mention of his health at that time. Since that event, government  
6 counsel has had no communication with Craig Lake.

7           **3. The Government Will Be Prejudiced if the Court**  
8           **Sets Aside the Default Judgment.**

9           The government is charged and must pay a daily storage fee to  
10 maintain proper custody of the defendant 2006 Bentley Flying Spur  
11 sedan. Because of the high dollar value of the defendant sedan, it  
12 must be stored indoors. The government is charged a daily fee for  
13 this storage. For claimants with a meritorious case, the fees paid  
14 for the storage and maintenance of seized assets constitutes a  
15 reasonable and necessary cost of doing the government's business.  
16 However, where the claimant's case is frivolous or otherwise without  
17 factual support, those costs constitute an unreasonable burden on the  
18 taxpayers.

19           Craig Lake's proposed claim relative to the defendant  
20 2006 Bentley Flying Spur sedan is absolutely without merit. Lake did  
21 not purchase the defendant sedan. He is not and never has been the  
22 registered owner. He has not paid the annual DMV registration fees  
23 for the defendant sedan. He has not insured the defendant sedan. He  
24 may have thought of buying the defendant vehicle. He may have wanted  
25 to purchase the defendant vehicle from its owner. What drives Craig  
26 Lake on is his erroneous belief that because the 2006 Bentley Flying  
27 Spur sedan was in his possession when it was seized by the USSS agents

28 //



1 on June 1, 2007, the government is somehow barred from forfeiting the  
2 vehicle. That belief is without legal support.

3           **4. Craig Lake's Proposed Claim Relative To the**  
4           **2006 Bentley Flying Spur Sedan is without merit.**

5           The party seeking relief from default bears the burden of showing  
6 a defense or claim on the asset to be forfeited that might make the  
7 result at trial different than that reached by default. Failure to  
8 do so is ground for denial of relief. Jones v. Phipps, 39 F.3d 158,  
9 165 (7th Cir. 1994); Williams v. Meyer, 346 F.3d 607, 614(6th Cir.  
10 2003). A litigant seeking to set aside a default judgment must  
11 present specific facts that would constitute a defense. Franchise  
12 Holding II, LLC v. Huntington Restaurants Group, Inc., 375 F.3d 922,  
13 926 (9th Cir. 2004); TCI Group Life Insurance Plan v. Knoebber, 244  
14 F.3d 691, 700 (9th Cir. 2001); Madsen v. Bumb, 419 F.2d 4, 6 (9th Cir.  
15 1969).

16           First and foremost is the fact that Craig Lake is not the  
17 registered owner of the defendant sedan. Jeremy Cao purchased the  
18 vehicle on or about March 8, 2006. From that date forward, the  
19 defendant 2006 Bentley Flying Spur sedan has always been registered  
20 in the name of Jeremy Cao, at his Rancho Santa Margarita, California  
21 address. Jeremy Cao owns the defendant sedan outright, and no  
22 lienholder is on title. On March 1, 2007, Jeremy Cao paid the DMV  
23 \$1,157.00 to renew the registration in his name. Most recently, on  
24 March 10, 2008, Jeremy Cao paid the DMV \$1,036.00 to renew the  
25 registration in his name until March 8, 2009. An examination of the  
26 official title documents on file with the DMV confirms Craig Lake has  
27 no ownership or lien interest in the vehicle. Craig Lake has no legal  
28 basis upon which to assert a claim on the defendant sedan.

1 Craig Lake has not demonstrated he has a legitimate claim to the  
2 defendant 2006 Bentley Flying Spur sedan. Since the date the  
3 defendant vehicle was seized, Craig Lake has offered a variety of  
4 stories relative to his relationship to the vehicle.

5 On June 1, 2007, when the defendant was seized, Lake was  
6 interviewed by USSS Agent McCaffree and SDPD Detective Morel. Lake  
7 claimed that he and the registered owner of the 2006 Bentley Flying  
8 Spur sedan, in the company of their mutual attorney, discussed the  
9 possibility of a sale of the vehicle to Craig Lake. Later during the  
10 interview, Lake changed his tale, and stated that an attorney was not  
11 a party to the conversation. Lake proposed transferring his ownership  
12 of 80 acres of land in Utah to Cao in exchange for title to the  
13 defendant vehicle. During the interview, Lake admitted he was aware  
14 the defendant vehicle was subject to seizure by the U.S. Government.  
15 Jeremy Cao told Lake that the government was looking for the defendant  
16 vehicle and planned to seize it. Craig Lake explained he thought that  
17 if he took possession of the defendant vehicle before the government  
18 seized it, the government would be unable to go forward with the  
19 seizure. Lake also admitted he has not registered the 2006 Bentley  
20 Flying Spur sedan with the DMV.

21 Craig Lake sent to government counsel a letter relative to the  
22 2006 Bentley Silver Spur sedan, dated October 18, 2007. A copy of the  
23 letter is attached to his March 21, 2008 filing in the instant case,  
24 and is designated as "Exhibit C." On the first page of the letter,  
25 in the paragraph numbered 1, Lake claims he met with Jeremy Cao in  
26 February 2006 to discuss a business opportunity. Cao was driving the  
27 defendant Bentley sedan. According to Lake, he instantly became  
28 interested in the defendant vehicle and discussed purchasing it from

1 Cao during that February 2006 meeting. Lake's account cannot be true.  
2 Jeremy Cao did not take delivery of the defendant Bentley sedan until  
3 March 2006. The February 2006 meeting between the two men, as  
4 described by Lake, is no more than a fabrication.

5 The purported exchange of Utah land for the defendant  
6 2006 Bentley Flying Spur sedan does not appear genuine, and apparently  
7 never occurred. A copy of the letter Craig Lake sent to government  
8 counsel is attached to his March 21, 2008 filing in the instant case,  
9 and is designated as "Exhibit C." On the third page of the letter,  
10 in the paragraph numbered 6, Lake claims, "I gave Jeremy a Bill of  
11 Sale and Escrow instructions for the Land Basin Title Company. I keep  
12 checking but the land is not transferred." Also included with his  
13 filing, Lake provided this Court with a copy of a single-page pre-  
14 printed document entitled, "REAL ESTATE PURCHASE CONTRACT AND RECEIPT  
15 FOR DEPOSIT." The single-page form, like the three-page letter from  
16 Lake to government counsel, is marked as Exhibit "C." The form  
17 appears to have been filled out in haste, and is very difficult to  
18 interpret. Many pre-printed lines are scratched out. Handwritten  
19 entries were inserted randomly. The legal description of the parcel  
20 and its location in the State of Utah are incomprehensible. The form  
21 and its confusing entries can have no legal significance. The  
22 document conveys absolutely no message to the reader.

23 In his filing, Craig Lake professes to be surprised that Jeremy  
24 Cao has yet to transfer the mysterious parcel of Utah land into his  
25 name. No wonder. It is impossible to imagine any title insurance  
26 company in any region of these United States that would accept Craig  
27 Lake's Exhibit "C" as a document transferring an ownership interest  
28 in a parcel of real property from one party to another.

1 The "REAL ESTATE PURCHASE CONTRACT AND RECEIPT FOR DEPOSIT" form  
2 submitted to this Court by Craig Lake is ludicrous. The document is  
3 meaningless. It conveys nothing. In March 2006, Jeremy Cao paid  
4 approximately \$186,945.00 in cash for the defendant 2006 Bentley  
5 Flying Spur sedan. No rational person would trade that vehicle one  
6 year later to Craig Lake for a worthless piece of paper.

7 Based upon the facts before this Court, Craig Lake has failed to  
8 make a showing that if this matter went to trial and was resolved by  
9 a jury, the result would differ from that when the Court entered the  
10 default order. Craig Lake has failed to present any facts which  
11 support his claim to the defendant 2006 Bentley Flying Spur sedan.  
12 He is not, and never has been, the registered owner. He has not paid  
13 the annual DMV registration fees. He has not insured the vehicle.  
14 He has not exchanged anything of value for the vehicle.

15 On the date the defendant sedan was seized, Craig Lake was simply  
16 in possession of the vehicle. In the spring of 2007, Jeremy Cao and  
17 Craig Lake knew the government was preparing to seize the defendant  
18 sedan. Lake believed that if he possessed the vehicle, the government  
19 could not seize it. He was wrong. Craig Lake did not purchase the  
20 defendant sedan. He has never owned the vehicle. He has never been  
21 the registered owner of the defendant sedan. He was never financially  
22 responsible for the defendant 2006 Bentley Flying Spur. Craig Lake  
23 has absolutely no facts upon which to assert a claim.

### 24 III

#### 25 CONCLUSION

26 Based on the foregoing, the United States requests the default  
27 judgment remain in effect. Craig Lake was properly served with the  
28 Verified Complaint for Forfeiture and Notice of Judicial Forfeiture

1 Proceedings. The notice contained specific instructions to Lake  
2 directing him when and to whom to send his verified claim. Moreover,  
3 the notice instructed Lake when and to whom to send his answer. He  
4 did nothing. Craig Lake is an educated and intelligent individual,  
5 able to understand the directions and timing requirements on the  
6 complaint and notice he received. Lake's delay is costing the  
7 government money. The United States is obligated to maintain the  
8 defendant 2006 Bentley Flying Spur sedan during the pendency of this  
9 litigation. Each day that passes generates additional storage costs.  
10 This Court should uphold the default judgment and permit the  
11 government to sell the defendant sedan.

12 Craig Lake's willful failure to timely respond to the Verified  
13 Complaint for Forfeiture is not the only reason standing in support  
14 of the default judgment. Most central to this Court's consideration  
15 should be the paucity of facts supporting Craig Lake's claim to the  
16 defendant sedan. On the day the vehicle was seized, Lake admitted to  
17 the law enforcement agents he took possession of the Bentley sedan for  
18 the purpose helping Jeremy Cao avoid its seizure by the government.  
19 Craig Lake's legal evaluation of the relevant forfeiture law was  
20 flawed. Moreover, there are absolutely no facts before this Court  
21 supporting Lake's claim to the defendant sedan. Craig Lake did not  
22 transfer anything of value for the defendant sedan. He did not  
23 purchase the vehicle. He is not a lienholder. He is not the  
24 registered owner of the vehicle. Lake has not paid the DMV  
25 registration fees. The facts before this Court demonstrate without  
26 contradiction that Craig Lake has no basis upon which to file a claim  
27 upon the defendant sedan.

28 //

1       The default judgment must remain in effect. To set it aside  
2 would result in a wasteful use of scarce United States Government,  
3 U.S. Attorney and judicial resources.

4       DATE: April 25, 2008

5                                       Respectfully submitted,

6                                       KAREN P. HEWITT  
7                                       United States Attorney

8                                       s/ Bruce C. Smith

9                                       \_\_\_\_\_  
10                                      BRUCE C. SMITH  
11                                      Assistant U.S. Attorney  
12                                      Attorneys for Plaintiff  
13                                      United States of America  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Case No. 07cv2100-DMS(AJB)  
)  
Plaintiff, ) CERTIFICATE OF SERVICE  
) BY MAIL  
v. )  
)  
ONE 2006 BENTLEY FLYING SPUR )  
SEDAN, CALIFORNIA LICENSE )  
NO. 5GAG721 )  
VIN: SCBBR53WX6036543, )  
ITS TOOLS AND APPURTENANCES. )  
\_\_\_\_\_ )

IT IS HEREBY CERTIFIED that:

I, Bruce C. Smith, am a citizen of the United States over the age of 18 years and a resident of San Diego County, CA; my business address is 880 Front Street, San Diego, CA 92101-8893; I am not a party to the above-entitled action;

I hereby certify that I have caused to be mailed PLAINTIFF'S RESPONSE AND OPPOSITION TO CRAIG LAKE'S MOTION TO SET ASIDE COURT'S ORDER GRANTING PLAINTIFF'S MOTION FOR JUDGMENT BY DEFAULT, by the United States Postal Service, to the following non-ECF participant in this case:

Craig Orland Lake, 7951 Broadway, Lemon Grove, CA 91945, the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008.

s/Bruce C. Smith  
BRUCE C. SMITH